

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHERRY PATTON

Claimant

VS.

STATE OF KANSAS

Respondent

AND

STATE SELF-INSURANCE FUND

Insurance Carrier

Docket No. 1,029,817

ORDER

Claimant requests review of the August 3, 2006 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge (ALJ) found the claimant's current need for a knee replacement did not arise out of and in the course of employment with the respondent.

The claimant requests review of whether her need for knee replacement surgery is due to her alleged work-related injury.

Respondent notes the claimant had a preexisting problem and knee replacement surgery had already been recommended when claimant settled a prior workers compensation claim in 1997. Respondent argues that claimant began complaining of right knee problems in November 2005 when she injured her right knee getting out of a truck and received continuous treatment after that incident. Finally, respondent further argues that a comparison of x-rays taken before and after claimant's alleged injury at work revealed no change in the condition of her knees. Consequently, respondent requests the Board to affirm the ALJ's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The claimant requested treatment for her back and bilateral knees. But the medical records introduced at the preliminary hearing primarily focused upon claimant's right knee complaints.

In 1997, the claimant had settled a previous workers compensation claim for injuries to her right knee. The medical records at that time indicated that a right total knee replacement had been recommended.

In November 2005, claimant had sought medical treatment for her right knee noting an onset of pain when she was getting out of her truck and stepped down wrong. Dr. Phillip S. Olsen provided treatment and diagnosed claimant with degenerative joint disease. Treatment options included referral to an orthopedist to discuss having a knee replacement.¹ Claimant was to follow up with the doctor if her condition did not improve.

Claimant was employed as a corrections counselor for respondent. In December 2005 the location of her office at work changed and this required her to go up and down stairs more frequently. Claimant experienced an increase in right knee pain as well as pain in her left knee.

On May 8, 2006, claimant returned to Dr. Olsen with bilateral knee pain and complaints of stress due to being inadequately prepared for her job demands. The doctor restricted claimant's stair climbing and the respondent moved her office to accommodate those restrictions. Even after claimant no longer had to climb stairs she continued to complain of knee problems.

At her June 8, 2006, appointment with Dr. Olsen it was determined the claimant would be referred to Dr. Do to consider a possible knee replacement. Dr. Olsen diagnosed claimant's condition as degenerative joint disease. The doctor also referred claimant for x-rays of her bilateral knees. The x-rays were compared to similar studies of claimant's right knee performed in 2003 and of the left knee performed in 2004. It was noted that compared to 2003 there was no real change in the appearance of the right knee. On the left it was noted the large joint effusion previously seen was no longer apparent.

Claimant then saw Dr. Do and Dr. Cusick with right knee replacement surgery being scheduled for August 2006. In July 2006, the claimant retired from her employment with respondent.

The claimant argues that when she had to do more stair climbing at work she suffered a worsening in her bilateral knee pain which has resulted in her seeking a right total knee replacement. The difficulty with claimant's argument is that she sought medical treatment for her right knee after an incident exiting a vehicle. As she sought treatment for

¹ P.H. Trans., Resp. Ex. 6.

that worsening right knee pain it was suggested that knee replacement was a treatment option. This examination, which occurred approximately one month before claimant's increased stair climbing, showed a clear history of ongoing knee problems, with significant preexisting deterioration in the knee. Dr. Olsen's recommendation of a possible total knee replacement one month prior to claimant's alleged increased stair climbing at work for respondent significantly undermines claimant's allegation of a work-related aggravation.

Claimant alleged a worsening of her condition due to stair climbing. But there is nothing in the medical records that support claimant's contention that her work activities caused or accelerated the need for her knee replacement surgery. Moreover, the x-ray studies show no change from previous studies performed before the alleged worsening of her condition due to stair climbing.

This Board Member concludes claimant has failed to meet her burden of proof that her current condition was caused by her work-related activities and affirms the ALJ's Order.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2005 Supp. 44-551(b)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.³

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Nelsonna Potts Barnes dated August 3, 2006, is affirmed.

IT IS SO ORDERED.

Dated this 31st day of October 2006.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
John C. Nodgaard, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge

² K.S.A. 44-534a.

³ K.S.A. 2005 Supp. 44-555c(k).